NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

National Postal Mail Handlers Union, AFL-CIO, Division of Laborers' International Union of North America, Local 304 (United States Postal Service) and Robert B. Webb. Case 9-CB-11918

June 26, 2008

DECISION AND ORDER

BY CHAIRMAN SCHAUMBER AND MEMBER LIEBMAN

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed by Robert B. Webb on February 11, 2008, the General Counsel issued the complaint on March 31, 2008, against National Postal Mail Handlers Union, AFL—CIO, Division of Laborers' International Union of North America, Local 304, the Respondent, alleging that it has violated Section 8(b)(1)(A) of the Act. The Respondent failed to file an answer.

On May 1, 2008, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on May 8, 2008, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Default Judgment¹

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively states that the answer must be received by the Regional Office on or before April 14, 2008, and that if no answer was filed, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated April 15, 2008, notified the Respondent that unless an answer was received by April 22, 2008, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

United States Postal Service, the Employer, provides postal services for the United States and operates various facilities throughout the United States in the performance of that function, including its facility at 1088 Nandino Boulevard, Lexington, Kentucky, the only facility involved in this proceeding. The Board has jurisdiction over the Employer and this matter by virtue of Section 1209 of the Postal Reorganization Act.

At all material times the Respondent, National Postal Mail Handlers Union, AFL—CIO, Division of Laborers' International Union of North America, Local 304, has been a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Scott Walsh held the position of the Respondent's area vice president, and has been an agent of the Respondent within the meaning of Section 2(13) of the Act.

At all material times since at least 1995, by virtue of Section 9(a) of the Act, the Respondent has been the exclusive collective-bargaining agent of the employees of the Employer, as described in Article 1 (Union Recognition) of the most recent collective-bargaining agreement between the Employer and National Postal Mail Handlers Union, AFL–CIO, Division of Laborers' International Union of North America, on behalf of the Respondent and its constituent locals, herein called the unit. This agreement is effective by its terms from November 21, 2006, through November 20, 2011.

About January 29, 2008, the Respondent, by Scott Walsh, at the Employer's 1088 Nandino Boulevard, Lexington, Kentucky facility, threatened to cause the Employer to discharge an employee for performing his job duties and/or for reasons other than the failure to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership in the Respondent.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has restrained and coerced employees in the exercise of their rights guaranteed in Section 7 of the Act in violation of Section 8(b)(1)(A) of the Act, and has thereby engaged in unfair labor practices affecting com-

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

merce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, we shall order the Respondent to post a notice to employees and members.

ORDER

The National Labor Relations Board orders that the Respondent, National Postal Mail Handlers Union, AFL—CIO, Division of Laborers' International Union of North America, Local 304, Lexington, Kentucky, its officers, agents, and representatives, shall

- 1. Cease and desist from
- (a) Threatening to cause the United States Postal Service to discharge an employee for performing his job duties and/or for reasons other than the failure to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership in the Respondent, unless its action is necessary to the effective performance of its function of representing its constituency.
- (b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Within 14 days after service by the Region, post at its business office and meeting places copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.
- (b) Within 14 days after service by the Region, sign and return to the Regional Director for Region 9 sufficient copies of the notice for posting by the United States Postal Service, if willing, at all places where notices to

employees are customarily posted in its facility in Lexington, Kentucky.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 26, 2008

Peter C. Schaumber, Chairman

Wilma B. Liebman, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten to cause the United States Postal Service to discharge an employee for performing his job duties and/or for reasons other than the failure to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership in us, unless our action is necessary to the effective performance of our function of representing our constituency.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

NATIONAL POSTAL MAIL HANDLERS UNION, AFL-CIO, DIVISION OF LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 304

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."